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MONTREAL QC H3A2Y-3 CA CANADA

In re Application of: :
Kamran Ahmed, et al. :
Application Serial No.: 09/526,441 :
Filed: March 16, 2000 :
For: USER SELECTABLE HARDWARE ZOOM IN A :
VIDEO DISPLAY SYSTEM :

DECISION
ON PETITION

This is a decision on the petition filed August 17, 2004 requesting to have an amendment entered, which is being treated as a Petition Under 37 CFR § 1.181 for supervisory review of the Final rejection, mailed May 17, 2004.

PERTINENT BACKGROUND HISTORY

A non-final action was mailed January 9, 2003. A response by applicant was filed on June 11, 2003. A Final action was then mailed on August 28, 2003. On December 8, 2003, applicant filed an After Final amendment and response. An Advisory Action was then mailed December 13, 2003 treating the December 8, 2003 submission; wherein the examiner stated that the requested drawing correction was approved, the declaration was not sufficient (with reasons), and stated that the amendment after final (to specification and claims) would be entered upon filing an appeal. A Notice of Appeal was filed February 2, 2004.

A Request for Continued Examination (RCE) was filed on April 30, 2004. The RCE was filed with several declaration submissions, as well as a reply. No amendment was submitted with the RCE filed April 30, 2004. The RCE also did not explicitly request entry (or non-entry) of the previously filed amendment after final (filed December 8, 2003).

A Final rejection was mailed May 17, 2004 wherein the examiner stated that because the RCE was not filed with a request to enter the previously filed amendment; it has not been entered.

In a petition filed August 17, 2004, petitioner requests entry of the amendment filed December 8, 2003 and argues that non-entry of the amendment is believed to prejudice applicant's rights.

OPINION

MPEP 706.07(h), section "D. Treatment of Proper RCE" (Rev. 2, May 2004) states:

"If the conditions for filing an RCE have been satisfied, the technical support personnel will process the >proper< RCE. Any previously filed unentered amendments, amendments filed with the RCE, and any amendments filed prior to the mailing of the next Office action (after the RCE) will normally be entered. **>All< amendments filed as of the date the RCE is filed are entered in the order in which they were filed >in the absence of any specific instructions for entry. For example, if applicant files an amendment after final rejection which is denied entry by the examiner and applicant subsequently files an RCE with an amendment but the RCE is silent as to

whether or not the previously filed after-final amendment should be entered, then the Office will enter both amendments in the order in which they were filed. If, however, applicant files an amendment after final rejection which is denied entry by the examiner and applicant subsequently files an RCE with an amendment including specific instructions that the previously filed after-final amendment is not to be entered, then the Office will enter the amendment filed with the RCE but will not enter the after-final amendment. If conflicting amendments have been previously filed, applicant should clarify which amendments should be entered upon filing the RCE (and fee). Applicants are encouraged to file all amendments no later than the filing of the RCE to avoid disapproval of entry under 37 CFR 1.111(b). See MPEP § 714.03(a)..."

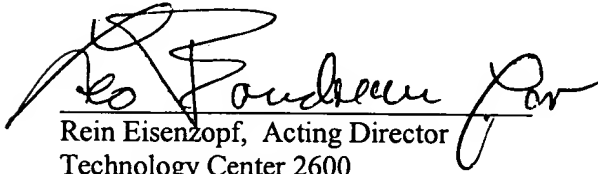
DECISION

Although the RCE filed April 30, 2004 was silent as to whether or not applicant wanted the previously filed After Final amendment to be entered, the amendment should have been entered and considered in accordance with MPEP 706.07(h), as cited above.

Accordingly, the Petition is **GRANTED**.

The Final rejection mailed May 17, 2004 is therefore deemed defective for failing to consider the amendment to claims 17 and 18; and is hereby vacated.

The file is being forwarded to TC 2600 technical support staff for entry of the amendment filed December 8, 2003. From there, the file will be forwarded to examiner for appropriate action.


Rein Eisenzopf, Acting Director
Technology Center 2600
Communications